

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND

UNITED STATES OF AMERICA

v.

ALAN SYLVESTER

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* Criminal No. JFM-04-0156

* Civil No. JFM-08-2606

2009 JAN -6 P 1:07

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MEMORANDUM

Alan Sylvester has filed this motion under 28 U.S.C. §2255 challenging the life sentence imposed upon him after he was convicted of conspiracy to possess with intent to distribute cocaine base. The ground for the motion is that the statutorily-mandated life sentence violates the due process and equal protection clause because when establishing the penalty Congress drew an irrational distinction between crack and powder cocaine. According to Sylvester, this irrational distinction has a disproportionate impact upon African-American defendants.

I am not unsympathetic to Sylvester's argument that the statutory minimum of life for certain crack cocaine offenses is unwarranted. However, nothing in the Supreme Court's decisions in *Kimbrough v. United States*, 128 S.Ct. 558 (2007) or *Gall v. United States*, 128 S.Ct. 586 (2007), upon which he relies, provides a basis for the relief Sylvester seeks. Neither of those cases dealt with legislatively enacted statutory minimums. Moreover, Sylvester did not raise the alleged unconstitutionality of his sentence on direct appeal, and *Kimbrough* and *Gall* do not provide a basis for finding that his appellate counsel was ineffective in not raising the constitutional argument.

A separate order denying Sylvester's motion is being entered herewith.

Date:

January 5, 2009

J. Frederick Motz
United States District Judge